



United States
Department of
Agriculture

Forest
Service

Huron-Manistee National Forests

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File Code: 1570-1

Date: September 10, 2004

Mr. James Humphreys
Director
Cadillac Jeepers
321 Pine Street
Mesick, MI 49668

Re: Appeal of the Decision Notice and Finding of No Significant Impact for the Briar Hills Project Environmental Assessment, Cadillac-Manistee Ranger District, Huron-Manistee National Forest, Appeal 04-09-04-0032 A215

Dear Mr. Humphreys:

On August 6, 2004, you filed a notice of appeal pursuant to 36 CFR 215.18. District Ranger Jim A. Thompson signed his Decision Notice and Finding of No Significant Impact on May 27, 2004, choosing Alternative 4 of the Briar Hills Project. The legal notice for the decision was published on June 22. My decision is based upon the appeal record and the recommendation of the Appeal Reviewing Officer (ARO), District Ranger Dan Lentz, Jonesboro/Murphysboro Ranger District, Shawnee National Forest, regarding the disposition of your appeal. The Appeal Reviewing Officer's review focused on the decision documentation developed by the Responsible Official, District Ranger Jim A. Thompson, and the issues raised in your appeal. The Appeal Reviewing Officer's recommendation is enclosed. This letter constitutes my decision on the appeal and on the specific relief requested.

FOREST ACTION BEING APPEALED

The Briar Hills Project will manage the transportation system and conduct vegetative treatments in the Briar Hills Project area managed under the Huron-Manistee National Forest Land and Resource Management Plan.

APPEAL REVIEWING OFFICER'S RECOMMENDATION

The Appeal Reviewing Officer found no evidence that the Responsible Official's decision violated law, regulation or policy. He found that the decision responded to comments raised during the analysis process and comment period and adequately assessed the environmental effects of the selected action. In addition, he found that the issues raised in your appeal were addressed, where appropriate, in the decision documentation. Based on his review, the Appeal Reviewing Officer recommended that the decision be affirmed.



DECISION

After review, I concur with the Appeal Reviewing Officer's analysis and findings regarding your specific appeal issues. To avoid repetition, I adopt his rationale as my own and refer you to the enclosed Appeal Reviewing Officer recommendation for further detail.

It is my decision to affirm District Ranger Jim A. Thompson's Decision Notice and Finding of No Significant Impact for the Briar Hills Project Environmental Assessment, Huron-Manistee National Forest.

Pursuant to 36 CFR 215.18(c) this decision constitutes the final administrative determination of the Department of Agriculture.

Sincerely,

/s/ Leanne M. Marten
LEANNE M. MARTEN
Appeal Deciding Officer
Forest Supervisor

Enclosure

cc:
Responsible Official, Jim A. Thompson
ARO, Dan Lentz
RO, Patricia Rowell



United States
Department of
Agriculture

Forest
Service

Shawnee National Forest
Jonesboro/Murphysboro
Ranger District

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File Code: 1570-1

Date: September 9, 2004

Route To:

Subject: Appeal of the Decision Notice and Finding of No Significant Impact for the Briar Hills Project Environmental Assessment, Cadillac-Manistee Ranger District, Huron-Manistee National Forest, Appeal 04-09-04-0032 A215

To: Forest Supervisor, Huron-Manistee National Forest

This letter constitutes my recommendation for the subject appeal filed by James Humphreys for Cadillac Jeepers of the Briar Hills Project on the Cadillac-Manistee Ranger District of the Huron-Manistee National Forest (HMNF). District Ranger James A. Thompson signed this Decision Notice on May 27, 2004. The legal notice of the decision was published on June 22, 2004.

My review was conducted pursuant to 36 CFR 215 – “Notice, Comment, and Appeal Procedures for National Forest System Projects and Activities.” To ensure the analysis and decision are in compliance with applicable laws, regulations, policies and orders, I have reviewed and considered each of the points raised by the Appellants and the decision documentation submitted by the Huron-Manistee National Forest. My recommendation is based upon review of the Project Record including but not limited to the scoping letter, public comments, Decision Notice (DN/FONSI), and the Environmental Assessment (EA).

On August 11 and 13, respectively, James Humphreys, representing Cadillac Jeepers, participated via conference call with Acting District Ranger Patricia O’Connell regarding an informal disposition meeting for the appeal of the Briar Hills Project. A meeting was scheduled for Friday, August 20 at the Manistee Ranger Station at 10:30 a.m., between Mr. Humphreys (and possibly other members of the Cadillac Jeepers Club) and Huron-Manistee National Forest personnel. Issues in the appeal were discussed. The appeal was not resolved.

Appeal Issues

The Appellants raised four main issues in this appeal of the Briar Hills Project Decision. The appeal points are answered in the order received from the Appellants.

Issue 1: The Briar Hills Project violates NEPA (NOA, p. 2).

The Appellants allege: *“The National Environmental Policy Act (NEPA) requires federal agencies, in the preparation of an Environmental Assessment (EA) to provide ‘sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact’”*.

Response: The Appellants do not state how the Forest Service has failed in this requirement, nor was this issue raised during public comment periods. However, the NEPA process requires that



a number of tasks be accomplished and documented by the managing agency (NEPA, 1970). They include, but are not limited to: scoping; the development of a proposed action; a purpose and need statement for the project; the decision to be made; development of alternatives; an analysis of the alternatives; and the documentation of the analysis in a Categorical Exclusion, an Environmental Assessment, or an Environmental Impact Statement. Scoping is further defined as a process for gathering comments about a site-specific proposed federal action to determine the scope of issues to be addressed and for identifying unresolved issues related to the proposed action (40 CFR 1501.7).

These requirements have all been completed and documented in the Briar Hills Project EA and in the Decision Notice and Finding of No Significant Impact (Decision Notice) (Folder 1, #s 3 and 7).

After reviewing the Planning Record, including but not limited to the scoping letter, public comments, EA, and Decision Notice, I find that the Forest did follow the NEPA process.

Issue 1A - The Responsible Official failed to obtain, evaluate, and provide sufficient evidence pertaining to the social economic impacts to local economies (NOA, p.2).

The Appellants allege: “...*the responsible official failed to obtain, evaluate, and provide sufficient evidence pertaining to the social economic impacts to local economies of the project in support of a Finding of No Significant Impacts as required by NEPA.*”

Response: As stated in Chapter 1 of the Briar Hills EA (Folder 1, # 7), the Briar Hills Project is tiered to the Forest Plan and the Final Environmental Impact Statement (Folder 1, # 7, p. 1-2) and would achieve management objectives associated with Management Area (MA) 6.2 and 2.1. Management direction for these areas is set forth in the Forest Plan standards and guidelines (pp. IV 34-63, 71-80, and 160-167). MA 6.2 provides for semi-primitive non-motorized recreational experiences. MA 2.1 provides high volumes of quality hardwood timber products and firewood with special consideration for enhancing wildlife habitats (Folder 1, # 7, p. 1-2).

The Appellants assert that the responsible official failed to obtain, evaluate, and provide sufficient evidence pertaining to the social economic impacts to local economies in making the decision to implement the Briar Hills Project (NOA, p.2). The Appellants provides no citation to law, regulation, or policy requiring any economic analysis of any non-commodity resources. The National Forest Management Act (NFMA) and its regulations set forth no particular requirements for economic analysis at the site-specific level. Additionally, the National Environmental Policy Act (NEPA) does not require the disclosure of socio-economic impacts beyond those associated with the proposed action. The law does not require a quantitative, monetary analysis of non-commodity resources.

The Forest Service Manual (FSM 1970.6) provides non-binding guidance as to the scope of economic analysis required in project decision-making: “the responsible line officer determines the scope, appropriate level, and complexity of economic and social analysis needed.” A review of the planning record indicates that an economic analysis was completed for the project. Project

level economic analysis is documented on pages 3-18 - 3-23 of the Briar Hills Environmental Assessment (Folder 1, #7). The planning record documents that businesses in the Mesick area were consulted with regard to the potential economic impacts to their respective businesses from implementation of the four alternatives being considered. The businesses indicated that Alternative 2 could be adverse to their economic interests, where as Alternatives 3 and 4 could continue to support their economic interests (Economic Analysis Information, Folder 3, # 28).

The Responsible Official clearly has considerable discretion in determining the appropriate level and type of economic analysis required for the project decision. The Briar Hills Project responds to goals and objectives set forth in the Huron-Manistee Forest Plan. In contradistinction to Appellants' assertion that the Briar Hills EA failed to consider social economic impacts to local economies, the record demonstrates that the Responsible Official did consider potential impacts to local communities in its economic analysis (Folder 1, # 3, pp. DN 14-DN 15, Decision Notice; Folder 1, # 7, pp. 3-18 – 3-23, Briar Hills EA; and Folder 3, # 28, Economic Analysis Information). The planning record clearly demonstrates that the Responsible Official considered local economic data in the decision making process.

The Multiple-Use Sustained-Yield Act, 16 U.S.C. 528, states that the national forests shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes. The statute requires the agency to give, "due consideration to the relative values of the various resources in particular areas." The mandate to give "due consideration" to the "relative values" of "various resources" gives considerable discretion to the agency with regard to the type, amount, and degree of analysis needed to support its management actions.

Based upon my review of the appeal record, I conclude that the Briar Hills EA and planning record comply with the controlling environmental statutes and regulations in regard to the Responsible Official's analysis of potential economic impacts to local communities within and adjacent to the Briar Hills Project Area.

Issue 1B: The Responsible Official claimed 40 miles of closures would have a negative economic impact on the local community but closure of 32 miles of road would not likely negatively impact tourism and the local economy (NOA, p.2).

The Appellants allege: "*The responsible official erred in claiming 40 miles of closures would, 'have a negative economic impact on the local communities,' but closure of 32 miles would 'not likely negatively impact tourism and the local economy. Such conflicting findings are arbitrary and do not support the Finding of No Significant Impact.'*" (NOA, pp. 1-2).

Response: The Appellants state, "the responsible official erred in claiming 40 miles of closures would, 'have a negative economic impact on the local communities,' but closure of 32 miles would 'not likely negatively impact tourism and the local economy. Such conflicting findings are arbitrary and do not support the Finding of No Significant Impact.'" (NOA, pp. 1-2).

The Appellants misconstrued a statement in the Briar Hills EA. The appeal record makes clear that the responsible official did not claim that 40 miles of road closure 'would' have a negative economic impact on the local communities. The responsible official recognized in the Decision

Notice that some residents near the Project Area expressed concern of economic hardship to local communities due to decreased motorized use of the area (Folder 1, # 3). The Decision Notice, however, emphasized that Forest users who prefer non-motorized recreational activities will be attracted to the nonmotorized recreational opportunities in the Project Area and these users will also contribute income to the local businesses (Folder 1, # 3, p. 15).

The EA stated that restricted motorized use in the Project Area had the “potential” to decrease tourism and have a negative impact on local communities due in part to communication with local businesses (Folder 1, #7, p. 3-21). It is important to recognize, however, that the planning record documents businesses in the Mesick area were consulted with regard to the potential economic impacts to their respective businesses from implementation of the four alternatives being considered. The businesses indicated that Alternative 2 could be adverse to their economic interests, where as Alternatives 3 and 4 could continue to support their economic interests (Economic Analysis Information, Folder 3, # 28). The Briar Hills EA underscores the fact that the designated snowmobile/motorcycle trail would remain open under all alternatives (EA, p. 3-21) and states that the negative economic effects of the road closures would be offset by similar recreational opportunities that are provided adjacent to the Project Area (Folder 1, #7, p. 3-21). Recognizing that the snowmobile/ motorcycle trail would remain open under all alternatives, the EA asserts that, use of this motorized trail would likely contribute income to the local businesses resulting in an economic benefit to the local communities. (Folder 1, #7, p. 3-22). The EA concludes that, “[r]ecreational opportunities are provided under all alternatives within and adjacent to the Project Area and would continue to promote tourism and provide income to local businesses.” (Folder 1, #7, pp. 3-22 – 3-23).

In light of Briar Hills Planning record and controlling environmental statutes the record demonstrates that the Responsible Official did consider recreation impacts in the economic analysis in manner that was supportive of his decision and was not arbitrary.

Issue 2 – “**The responsible official erred in limiting this road density goal of 1 miles [sic] of road per square mile to this single project area rather than analyzing the road density average for all of Management Prescription Area 6.2 and therefore violated the Forest Plan, thus not supporting a Finding of No Significant Impact**” (NOA, p.3).

The Appellants allege: “*The Forest Plan goal is to achieve an **average** road density of 1 mile per square mile. While the project area may indeed have a road density of nearly 4 miles of road per square mile, the Forest Plan road density goal does not **prohibit** any particular area of the forest [sic] from exceeding the goal of an average of 1 mile of road per square mile*” (emphasis in original).

Response: The Appellants did not raise this issue during the comment period for the draft EA. However, this issue was raised by other interested parties, and the Appellants did allude to road densities in their letter.

At the core of this issue is an assertion that the Responsible Official was incorrect in applying the standard of one mile of road per square mile to only this site. Within the Standards and Guidelines, the current Forest Plan holds that the standard for Management Area 6.2 –

Semiprimitive Nonmotorized Rolling Plains and Morainal Hills will be a “maximum average of 1 mile of road per square mile (all road classes). This does not include road in densely developed areas such as towns, villages, and residential developments” (HMNF Forest Plan, Folder 3, #29, p. IV-208). The Forest Plan goal is that all 14,400 acres of land under MA 6.2 be managed according to these standards and guidelines. Put another way, the goal is that consideration be given to road density across all sites within MA 6.2. Application of this standard for all 6.2 lands has been emphasized throughout the process, in the EA Purpose and Need (Folder 1, #7, pp. 1-3 – 1-4), in the EA Affected Environment section (Folder 1, #7, pp. 3-6 – 3-11), and in response to public comments (e.g., Folder 1, #4, pp. I-70 & I-71).

The Appellants allege that the Responsible Official erred in limiting the Briar Hills Project area to the MA 6.2 prescriptions. However, there is no way to construe the application of Forest Plan guidance to *any* parcel of HMNF land as an error. The Plan gives direction for all National Forest System lands on the HMNF; this direction can only be interpreted as the central component to determining management practices in the Briar Hills area.

In summary, the Purpose and Need for the Briar Hills Project included the need to meet Forest Plan direction for semi-primitive non-motorized areas. While there is no requirement that each parcel of MA 6.2 land meet the density standards, it is disingenuous to suggest the Responsible Official erred in attempting to implement Forest Plan direction in the Briar Hills area. Thus, I believe the Responsible Official acted correctly in considering the density of roads in the Briar Hills Project area.

RECOMMENDATION:

After reviewing the Project Record for the Briar Hills Project, and considering each issue raised by the Appellants, I recommend District Ranger James A. Thompson’s Decision Notice of May 27, 2004 be affirmed.

/s/ Dan L. Lentz
DAN L. LENTZ
Appeal Reviewing Officer
District Ranger

cc:
Responsible Official, Jim A. Thompson
RO, Patricia Rowell